

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ethan Waterman	Team: Squad #14	CCRB Case #: 202004244	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 05/28/2020 5:45 PM	Location of Incident: East 17th Street and Park Avenue South	Precinct: 13	18 Mo. SOL 11/28/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 05/28/2020 9:50 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/15/2020 11:22 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brendan Dono	31863	936506	010 PCT
2. POM Neville Dastur	00553	943132	010 PCT
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Elias Vazquez	03818	949762	SRG 2
2. CPT Joseph Taylor	00000	924542	SRG 3
3. POM Anibal Vasquez	28771	955624	SRG 2

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: An officer struck § 87(2)(b) with an asp.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On May 28, 2020, Sergeant Elias Vazquez of Strategic Response Group (SRG) 2 called the Internal Affairs Bureau Command Center and reported this incident on behalf of § 87(2)(b). The CCRB received this complaint on June 15, 2020.

On May 28, 2020, at approximately 5:45 p.m., in the vicinity of Union Square Park on the northeast corner of East 17th Street and Park Avenue South in Manhattan, an unidentified officer allegedly struck § 87(2)(b) in the arm with an asp (**Allegation A: Force**, § 87(2)(g)). Unidentified officers then handcuffed § 87(2)(b) with the assistance of PO Neville Dastur and PO Brendan Dono of the 10th Precinct. § 87(2)(b) was transported to One Police Plaza, where he was released with three summonses issued by Sgt. Vazquez.

§ 87(2)(g), § 87(4-b)

§ 87(2)(b)

The CCRB received BWC footage from Sgt. Vazquez, PO Dastur, PO Dono as well as PO Anibal Vasquez of SRG 2. The relevant aspects of BWC footage will be discussed in further detail below.

Findings and Recommendations

Allegation (A) Force: An officer struck § 87(2)(b) with an asp.

It is undisputed that § 87(2)(b) was present at a demonstration against police brutality in the vicinity of Union Square Park when this incident occurred.

According to Sgt. Vazquez's call to IAB (BR 01), § 87(2)(b) alleged that he was hit in the arm with an asp by an "unknown [uniformed member of service] wearing a white shirt." § 87(2)(b)'s arm was swollen, but § 87(2)(b) refused medical treatment.

The investigation never obtained a statement from § 87(2)(b) despite repeated contact attempts. § 87(2)(b) missed two scheduled phone interviews and did not return the investigation's follow-up calls, emails, or text messages. On July 20, 2020, § 87(2)(b) acknowledged during a short phone call that he was apprehended on May 28, 2020 but did not further discuss the details of this incident.

Sgt. Vazquez's BWC footage (BR 02) shows § 87(2)(b) prior to his placement in custody. At the 01:10 timestamp on the player, § 87(2)(b) throws a water bottle and Sgt. Vazquez approaches him with his asp wielded in his right hand. The video does not show Sgt. Vazquez strike § 87(2)(b) with the asp, nor does it show any other officer do so. At the 01:14 timestamp on the player, § 87(2)(b) runs away from Sgt. Vazquez, who then turns his attention to another person. Sgt. Vazquez does not apprehend § 87(2)(b) and his video does not display § 87(2)(b)'s apprehension; his BWC footage later shows § 87(2)(b) in handcuffs. Sgt. Vazquez's BWC footage displays at least eight members of service wearing white uniformed shirts during its 12:02 runtime.

PO Dastur's, PO Dono's, and PO Vasquez's BWC footage (BR 03, 04, 05) show § 87(2)(b) already in police custody; the videos do not depict the alleged asp strike.

The investigation received the three summonses reported by Sgt. Vazquez as well as a TRI prepared by Captain Joseph Taylor of SRG 3. For the two summonses for disorderly behavior and disorderly conduct (BR 06), the narrative for each reported that Sgt. Vazquez saw § 87(2)(b) "walking in the street with at least 30 others engaged in a protest, blocking vehicular traffic while the sidewalk was available." In the summons for harassment (BR 07), Sgt. Vazquez reported that he saw § 87(2)(b) "with intent to annoy," throw "a water bottle at and hit a uniformed member of [the] NYPD." Captain Taylor wrote in the TRI detail section (BR 08) that § 87(2)(b) "complained

of a contusion to his left forearm” and asserted that he was “struck by a baton by an officer in a ‘white shirt.’” Captain Taylor further noted that § 87(2)(b) “was not able to provide a detailed description of the officer that struck him with the baton.”

On June 9, 2020, in CCRB case 202003632, Inv. Conor O’Shea requested TARU footage for the eight pole cameras which encircled Union Square Park, between the hours of 3:45 p.m. and 7:15 p.m. on May 28, 2020. However, the CCRB received no TARU footage regarding this request. Inv. O’Shea emailed the IAB/CCRB Liaison Unit on a monthly basis regarding the request and received his first response on October 14, 2020. In it, Detective Monique Smalls of the IAB/CCRB Liaison Unit relayed that Inv. O’Shea had requested inaccurate pole camera numbers and that TARU had contacted Inv. O’Shea in regard. However, it is evident that these pole cameras do exist at Union Square Park. To wit: on June 8, 2020, Sergeant Barbie Torres of Patrol Borough Manhattan South (PBMS), who completed a concurrent investigation of this incident, reviewed pole camera footage from pole C126, one of the eight pole cameras requested by Inv. O’Shea on June 9, 2020. Inv. O’Shea also requested TARU footage from any observers on the ground for the same time and location parameters, which yielded negative results.

Sgt. Torres conducted PBMS’ concurrent investigation into § 87(2)(b)’s allegation of an asp strike (BR 09). Like the CCRB, PBMS did not obtain a statement from § 87(2)(b) and deemed him uncooperative with their investigation. The PBMS investigation reviewed BWC footage, TARU footage as well as the aforementioned summonses and TRI. The BWC footage, the contents of which were not specified, showed that while § 87(2)(b) sustained swelling to the left elbow, the footage did not show any use of force. Similarly, Sgt. Torres’ review of TARU footage, from poles C126A and C126B, depicted “numerous [uniformed members of service] wearing white shirts” and showed no use of physical force by any such officers. Furthermore, Sgt. Torres noted that “none of them are displayed holding or swinging a baton.” The PBMS investigation did not determine who, if anyone, struck § 87(2)(b) with an asp and ruled the allegation unsubstantiated.

The investigation identified Captain Taylor as the highest-ranking officer present during this incident and interviewed him in regard.

Captain Taylor testified (BR 10) that he had no independent recollection of the incident. Though Captain Taylor was shown the TRI he prepared as well as BWC footage of § 87(2)(b) Captain Taylor had no independent recollection of § 87(2)(b) or interacting with any civilian who complained of being struck with an asp. Captain Taylor did not see a uniformed officer in a white shirt strike § 87(2)(b) or anyone, with an asp. While Captain Taylor indeed wears a white shirt as part of his uniform, the investigation had no additional reason to believe that Captain Taylor was the officer who allegedly struck § 87(2)(b). Including Captain Taylor, at least eight members of service wearing white uniformed shirts were present at the incident time and location, per Sgt. Vazquez’s BWC footage.

PO Dastur testified (BR 11) that he was in the vicinity of East 17th Street and Park Avenue South when he saw two to three officers holding § 87(2)(b) on the ground and yelling for handcuffs. PO Dastur did not recall what commands the two to three officers were from, and did not recall what kind of uniform, if any, the officers were wearing. PO Dastur assisted in handcuffing § 87(2)(b). PO Dastur picked up § 87(2)(b) and thereafter held onto him with PO Dono for several minutes before SRG officers placed § 87(2)(b) into a police bus. PO Dastur did not see any officer wield an asp, nor did he see any officer strike § 87(2)(b) with an asp. PO Dastur did not independently recall seeing any uniformed officers in white shirts during this incident. Given this testimony, and as PO Dastur does not wear a white shirt as part of his uniform, the investigation determined that this member of service is not a subject in this case.

PO Dono testified (BR 12) that he was in the vicinity of East 17th Street and Park Avenue South when he saw four officers, who were yelling for handcuffs, on the ground on top of § 87(2)(b). The four officers all wore plainclothes suits without nametags with shields on their belts—some wore blazers but all of them wore dress shirts and slacks – and PO Dono specified that none of the officers were uniformed with white shirts. PO Dono did not know the command to which

these officers belonged. PO Dono ran over to provide his handcuffs to the officers. As he approached, PO Dono saw the four officers piled on the ground, two aside atop § 87(2)(b) PO Dono did not see any physical actions taken by the four officers against § 87(2)(b) as he could not even see § 87(2)(b) underneath the four officers. PO Dono did not see any of the four officers wield an asp, much less strike § 87(2)(b) with an asp. After PO Dono handed off his handcuffs, the four officers handcuffed § 87(2)(b) and stood him up. PO Dono did not further assist the four officers in apprehending § 87(2)(b) With § 87(2)(b) upright, the four officers told PO Dono to hold onto § 87(2)(b) until SRG officers could take him for transport. Given this testimony, and as PO Dono does not wear a white shirt as part of his uniform, the investigation determined that this member of service is not a subject in this case.

Sgt. Vazquez testified (BR 13) that he first saw § 87(2)(b) when he threw a water bottle while he stood in the street at the northwest corner of East 17th Street and Park Avenue South. The water bottle struck an unknown uniformed member of service. In response, Sgt. Vazquez gave chase to approach and apprehend § 87(2)(b) Before Sgt. Vazquez reached § 87(2)(b) however, another civilian pushed into Sgt. Vazquez. § 87(2)(b) ran away while Sgt. Vazquez apprehended the civilian. Shortly thereafter, Sgt. Vazquez saw that PO Dastur and PO Dono had apprehended § 87(2)(b) was taken to a prisoner wagon, in which he was transported to mass arrest processing at One Police Plaza. Sgt. Vazquez was later informed by PO Vasquez that § 87(2)(b) had a contusion on his arm. Sgt. Vazquez then saw the contusion himself, which was swollen on § 87(2)(b)'s forearm. Sgt. Vazquez briefly interviewed § 87(2)(b) about this contusion. § 87(2)(b) told Sgt. Vazquez that someone in a white shirt had struck him with an asp and could not describe them further. Sgt. Vazquez also used this brief interview as the basis of the TRI prepared for § 87(2)(b) by Captain Taylor. Upon reviewing his BWC footage, Sgt. Vazquez did not recall striking § 87(2)(b) with an asp, nor did he recall making any physical contact with § 87(2)(b) Sgt. Vazquez did not ever observe a member of service in a white shirt strike § 87(2)(b) with an asp. Given this testimony, and that Sgt. Vazquez does not wear a white shirt as part of his uniform, the investigation determined that this member of service is not a subject in this case.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (BR 15).
- PO Dastur has been a member of service for 13 years and has been the subject to two prior complaints and three charges, none of which were substantiated. § 87(2)(g)
- PO Dono has been a member of service for 15 years and has been subject in 23 previous cases and 36 charges, one of which was substantiated.
 - 201610022 involved a substantiated allegation of a threat of summons against PO Dono. The CCRB recommended Command Discipline A and the NYPD imposed Command Discipline A.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of September 24, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (BR 16).
- § 87(2)(b)

Squad No.: 14

Investigator: Ethan C. Waterman Inv. Ethan Waterman December 10, 2020
Signature Print Title & Name Date

Squad Leader: Cassandra Fenkel IM Cassandra Fenkel December 10, 2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date